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ANNUAL REPORT OF THE OPEN MEETINGS  
COMPLIANCE BOARD

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# SEVENTH ANNUAL REPORT

## OF THE

### OPEN MEETINGS COMPLIANCE BOARD

*Pursuant to State Government Article §10-502.4(e)*

#### BOARD MEMBERS

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August 25, 1999

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**B. Complaints and Opinions**

From July 1, 1998 through June 30, 1999, the Compliance Board received 12 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation. Three complaints were pending on June 30, 1999.

Table 1 below indicates that complaint from citizens exceeded complaints from representatives of the news media.

TYPE OF COMPLAINANTS	
Type	Number
Citizens	7
Government Officials	2 <sup>1</sup>
News Media	4

Table 1

More complaints involved public bodies in municipalities than in other levels of government, as Table 2 indicates.<sup>2</sup> As the Board has noted in the past, this fact is unsurprising, because there are several times as many municipalities as counties in Maryland. The numbers also reflect the fact that three citizens simultaneously filed separate complaints about a particular municipality. Three complaints involved meetings between county and city councils.

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<sup>1</sup> One complaint was submitted jointly by a citizen and a government official.

<sup>2</sup> One complaint concerned both municipal and county public bodies; both are included in Table 2. Another complaint concerned the student government association of a State college, which the Compliance Board held was not a "public body" subject to the Act; this entity is omitted from Table 2.

<b>COMPLAINTS BY TYPE OF PUBLIC BODY</b>	
<b>Public Body</b>	<b>Number</b>
State	4
County	4
School Board	0
Municipality	7

**Table 2**

During the reporting period, the Board issued eleven opinions.<sup>3</sup> In only one of these opinions did the Board find a violation of the Act, relating to a town board's rescheduling of a meeting without proper notice. In two other opinions, the Compliance Board had an insufficient factual basis to reach a conclusion about alleged violations.

Although it is impossible to estimate the incidence of unreported violations, the Compliance Board believes that the low number of known violations reflects overall compliance with the law by public bodies at all levels of government. This conclusion is further supported by the fact that only a handful of Open Meetings Act issues have been brought to court.

The Act calls upon us to discuss in particular "complaints concerning the reasonableness of the notice provided for meetings." §10-502.4(e)(2)(iii). In general, notice issues have not been a focus of complaints, probably because the Act is quite flexible in allowing a range of notice methods. That is, the Act allows notice to be given by "any ... reasonable method," including posting at a public location near the site of the meeting. Thus, the General Assembly left considerable discretion to each public body as to the method of public notice. As long as a public body posts the notice or takes one of the other steps set out in the law in a timely manner, the Board will not find a violation of

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<sup>3</sup>Two of the opinions concerned complaints that had been filed during the prior fiscal year. One complaint was pending at the end of the fiscal year.

the notice requirement.<sup>4</sup> Public bodies do face notice problems, however, when they call a meeting on short notice or delay a previously scheduled meeting. The Compliance Board's guidance is that the public should be told of unexpected scheduling developments as soon as practicable, by whatever means are feasible under the circumstances.

The Act also calls on the Board to discuss "the impact on State and local governments of the provision of §10-502(h)(2) of this article, including a discussion of how the affected entities had adhered to requirements of this subtitle." In §10-502(h)(2), the General Assembly extended the definition of "public body" to include "any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least 2 individuals not employed by the State or a political subdivision of the State." This provision originally carried a "sunset" date of June 30, 1994, but is now a permanent part of the law. No issue concerning the expanded definition arose during this reporting period.

## II

### Recommendations

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). As in prior years, the Compliance Board recommends that §10-502.4(e)(2)(iv) be eliminated. As noted above, this provision requires every annual report of the Board to discuss "the impact on State and local governments of the provisions of §10-502(h)(2) of this Article, including a discussion of how the affected entities have adhered to the requirements of this subtitle." The provision referred to is the one that extended the definition of "public body" to include certain citizen advisory panels.

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<sup>4</sup> In addition, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "executive function."

In all likelihood, the Compliance Board's duty to discuss this provision in its annual report was linked to the original sunset provision. The General Assembly wished to ensure that it would have information enabling it to make a judgment about extending or eliminating the sunset provision. Now that the General Assembly has eliminated the sunset provision, there appears to be no sound reason for *requiring* a discussion of the issue annually. Should some particular occurrence in the future merit discussion in an annual report, the Compliance Board will do so. But an annual, required recitation serves no purpose.

## TOPICAL INDEX

July 1, 1992 - June 30, 1999

### CLOSED SESSION DECISIONS

The Act does not prohibit taking final action in closed session . . . . . 94-5

### CLOSED SESSION PROCEDURES

#### *Voting*

Impromptu hallway meeting is subject to all procedural requirements for a closed session . . . . . 93-1

Vote at one meeting to close the next is impermissible . . . . . 94-5, 95-8

Vote to close must occur in open session . . . . . 96-12, 97-1, 97-4

#### *Written Statement*

Topic to be discussed at closed session must be included in statement prior to closed session . . . . . 92-1

Oral discussion of basis for closing session, later recorded in minutes, does not satisfy requirement for written statement prior to closed session . . . . . 92-4, 92-5

Written statement may preserve confidential information justifying closed session . . . . . 92-5, 93-2, 97-10

"Reason" for closing session, to be included in written statement, must go beyond uninformative boilerplate . . . . . 93-2, 96-12, 97-10, 97-11

Written statement prior to closed session need not identify anticipated participants in closed session . . . . . 93-9

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Exception that is not cited by public body in written statement prior to closed session may not be asserted subsequently as justification for closing the session . . . . . 93-11, 94-5, 94-7

**COMPLIANCE BOARD - AUTHORITY AND PROCEDURES**

Compliance Board is not able to resolve disputed issues of fact . . . . 94-1, 94-8, 99-4

Compliance Board has no enforcement authority . . . . . 95-2, 97-1

Compliance Board cannot address allegations of impropriety apart from alleged violations of the Open Meetings Act or comment on compliance with other legal requirements . . . . . 98-1, 98-6, 98-9, 99-6

**EXCEPTIONS PERMITTING CLOSED SESSIONS**

*Business Relocation*

Proposal by business entity to move from one site to another within the State falls within exception for business relocation discussion, §10-508(a)(4) . . . 93-3

*Examinations*

Discussion of electrician's examination, as part of process for obtaining a certificate of registration, falls within exception for certain examinations, §10-508(a)(11), including licensing examinations . . . . . 92-4

*Legal advice*

Advice from town attorney on individual compliance with ethics law falls within exception for advice from counsel, §10-508(a)(7) . . . . . 92-1

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body’s decisions ..... 96-6, 96-7

***Litigation***

“Potential litigation” must be a concrete possibility for exemption to be invoked  
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Litigation exception, §10-508(a)(8), applies to discussion about pending or  
potential litigation, including settlement options, whether public body  
would be plaintiff or defendant ..... 94-1

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directly related to litigation ..... 94-1

Litigation exception may be invoked even if counsel is not present ..... 94-5

***Other law***

Public body may invoke “other law” exception, §10-508(a)(13), to avert  
disclosure of document subject to attorney-client privilege ..... 94-5

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*Procurement*

Discussion of strategy for project to be put out to bid falls within procurement  
exception, §10-508(a)(14) ..... 94-5

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Exception applies only to discussion that concerns competitive bidding or proposals, not negotiation strategy in other contexts . . . . . 97-8

***Property acquisition***

Discussion of sale of vehicles and acquisition of new ones does not fall within property acquisition exception, §10-508(a)(3) . . . . . 94-5

Exception applies only if public body has power to acquire property under discussion . . . . . 97-8

***Public security***

Discussion of procedures for handling petty cash does not fall within the public security exception, §10-508(a)(10) . . . . . 94-5

**EXECUTIVE FUNCTION**

***The following were held to fall within the exclusion:***

Meeting conducted by county commissioners with board of non-profit hospital, when commissioners have oversight responsibility over hospital . . . . . 92-2

Work session of municipal planning commission . . . . . 92-3

Discussion of complaint against electrician by regulatory board . . . . . 92-4

Discussion by county commissioners in code home rule county of effect of cuts in State aid to counties . . . . . 93-2

Discussion by county commissioners confined to matters of budgetary administration and not involving proposal to amend budget . . . . . 93-2

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Solicitation of advice from colleagues by town council member who had certain  
administrative responsibilities ..... 98-6

City Council's exercise of supervisory authority over town manager's  
preparation of compensation and benefit plans ..... 98-7

Appointment by county commissioners to fill planning commission vacancy .... 99-5

*The following were held to be outside the exclusion:*

Discussion by special tax district board of potential petition drive ..... 94-7

Discussion of attendees' desire to address public body ..... 95-2

Discussion of a contract amendment ..... 95-5

Changes in law to achieve merger of county and city purchasing departments . . 97-15

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**LEGISLATIVE FUNCTION**

- Entire process by which City Council considers ordinance, including briefing about the ordinance, falls within legislative function and therefore is subject to the Act . . . . . 93-6
- Making an appointment, rather than approval of a proposed appointment, falls outside legislative function . . . . . 95-5

**LICENSING MATTERS**

- Regulatory body’s conduct of occupational licensing examination, even if within executive function, nevertheless subject to act as part of the process of granting a license . . . . . 92-4

**“MEETING”**

- When quorum of public body attends meeting of an entity that is not a public body, applicability of Act depends on whether public body is itself considering public business . . . . . 92-2, 94-9, 95-4, 95-10, 96-3, 96-10, 98-8
- Information-gathering at the earliest stages of policy formulation is part of the consideration of public business and therefore is a meeting . . . . . 93-2, 93-6, 95-7, 97-2
- Informal gathering before a meeting or during a break is permissible so long as no discussion occurs about meeting topics . . . . . 94-6, 95-6, 96-3
- Act does not apply to discussions among members of a public body if no quorum is present . . . . . 94-8, 94-10, 95-10, 96-1, 97-4, 97-12, 97-13, 99-5, 99-6
- Act does not apply to conversation among quorum limited to personal information or social “small talk” . . . . . 95-7, 99-5
- Social event with general topical presentation is not a meeting subject to Act . . . 97-7
- Social event at which public business is mentioned only briefly and in passing is not a meeting to the Act . . . . . 98-2

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Opportunity for a public body’s quorum to explore issues as a group and exchange comments and reactions is “the consideration or transaction of public business” and is therefore a meeting . . . . . 98-2

**MINUTES**

*Closed session statement*

Level of detail in statement need not compromise goals of confidentiality that led to session being closed in the first place . . . . . 92-5, 94-5, 95-1

While “topics of discussion” disclosed in minutes of next open session would ordinarily be the same as “topics to be discussed” in written statement prior to closed session, nothing in the Act prevents a public body from discussing less than it anticipated . . . . . 93-9

Statement that fails to cite authority for closing a session or to list the topic of discussion and the persons present violates the Act . . . . . 94-2

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Minutes must reflect specific statutory authority for closing a session . . . . . 94-5

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Disclosure of transcript satisfies minutes requirement . . . . . 96-4

*Procedure*

Act does not prescribe precise method by which minutes are prepared or amended . . . . . 94-2

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Act allows closed session minutes to be prepared by the time of the public body's next regularly scheduled meeting ..... 95-3

Act allows a public body a reasonable amount of time to review draft minutes for accuracy and to approve them ..... 98-3

Public is not entitled to inspect draft, unapproved minutes ..... 98-3

Act does not prevent a public body from disclosing minutes of a meeting closed to discuss a specific personnel matter, but sound practice suggests that affected employee be given opportunity to object ..... 98-4

**NOTICE REQUIREMENTS**

*Content*

Notice need not describe particular agenda items that are expected to be discussed at meeting ..... 92-5, 94-4, 95-1, 98-9, 99-7

One-time publication of schedule of anticipated meeting times, if coupled with posted notice of each meeting, complies with the Act ..... 94-4

Prince George's County Council need not differentiate its role as District Council in announcing time of meeting ..... 98-9

*Method*

If public is told of the practice, notice through posting in a single location complies with the Act ..... 92-3, 93-4, 98-5

Announcement of future meeting at open meeting attended by press is a "reasonable method" of public notice ..... 93-5

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Public must be notified of canceled meeting . . . . . 96-11

Notice to reporters is optional if another means of notice has been provided . . . . 97-9

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***Timing***

Scheduling of meeting on short notice requires best public notice feasible under  
the circumstances . . . . . 93-7, 98-3, 99-3

Prompt scheduling of meeting does not excuse failure to provide notice . . . . . 96-10

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. . . . . 98-5

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**OPEN SESSION REQUIREMENT**

Act does not regulate the manner in which a public body makes decisions at an  
open session . . . . . 92-5

Session of county council held without notice and in an unusual meeting place  
violated open session requirement, even if a member of the public who  
happened upon the session would have been admitted . . . . . 93-8

If a matter is required to be discussed in open session, every aspect of the  
discussion, from beginning to end, must be in open session . . . . . 94-5, 96-4

Open meeting must be conducted in a manner that, as a practical matter, does  
not exclude public . . . . . 94-6, 96-4

Act is not violated if public body immediately recognizes that newly raised  
topic may not be discussed in closed session and does not discuss topic  
further . . . . . 95-3

Public body may not prohibit videotaping of audience at meeting . . . . . 95-9

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- Public body violates Act by conducting discussion after announcing adjournment of open session . . . . . 96-4, 96-9
- Public has no entitlement under Act to comment on public body's decisions . . . . 97-7
- People with disabilities must be accommodated at meeting, but meeting need not be held in barrier-free facility . . . . . 97-9, 97-11

### **PUBLIC BODY**

#### *Factors to be considered:*

- Receipt of public funds is irrelevant to public body status . . . . . 96-11, 97-3

#### *Determined to be a public body:*

- Committees comprising town residents appointed by resolution of city council . . . . . 94-4
- Board of legislatively created corporation, intended by the General Assembly to be a governmental entity . . . . . 97-3

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- City, county, or school board staff members . . . . . 92-2, 98-8, 99-2
- Municipal officials and individual members of city council . . . . . 93-6
- County department heads and county commissioners in a county in which commissioners are executive head of county government . . . . . 93-10
- Private, voluntary association of public officials and others . . . . . 95-4
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- Student government association at public college . . . . . 99-1

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- If, under municipal charter, city council has appellate role in dispute over referendum petition, activity is a quasi-judicial function excluded from the Act . . . . . 98-1

### **QUASI-LEGISLATIVE FUNCTION**

- Budget review by county legislative body, including earliest stages of information-gathering, is a quasi-legislative function subject to the Act . . . . . 93-8, 97-2
- Amendment of employment contract is a quasi-legislative function . . . . . 95-5
- Review of staff's proposed budget by library board committee is a quasi-legislative function . . . . . 97-7

### **SCOPE OF ACT**

- Activity by public body that falls within none of the defined functions is covered by the Act . . . . . 94-7, 94-10, 95-2

### **ZONING MATTERS**

- Zoning does not include planning for purposes of the Act . . . . . 92-3